

REMARKS

The Office Action mailed on April 28, 2004, has been reviewed and the comments of the Patent and Trademark Office have been considered. Prior to this paper, claims 1-6 and 9-22 were pending in the present application. By this paper, Applicants do not cancel any claims and add claims 25 and 26. Therefore, claims 1-6, 9-22 and 25-26 are pending in the present application.

Applicants respectfully submit that the present application is in condition for allowance for the reasons that follow.

Indication of Allowable Subject Matter

Applicants thank Examiner Roberts for allowing claims 9 and 10 and 19-22, and indicating that claims 5, 11 and 15-16 contain allowable subject matter.

Objection to Claim 11

Claim 11 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Applicants respectfully submit that the objection to claim 11 should be withdrawn, since claim 11 in fact is an independent claim. Reconsideration is respectfully requested.

Reference Characters

Reference characters have been retained in the claims but have no effect on the claim scope per MPEP § 608.01(m)

Rejoinder

Applicants note that claim 6 is dependent from a claim that has been identified as a generic claim, claim 4. Thus, Applicants respectfully request that claim 6 be rejoined for consideration and allowance once claim 4 is allowed.

Applicants further note that claim 17 is dependent from a claim that is indicated as containing allowable subject matter. Thus, Applicants respectfully request that claim 17 be rejoined for consideration and allowance once claim 15 is allowed.

Applicants, of course, continue to reserve the right to file one or more divisional applications.

Rejections Under 35 U.S.C. § 102

Claims 1-4, 12, 13, 14 and 18 stand rejected under 35 U.S.C. §102(b) as being anticipated by Richardson (U.S. Patent No. 3,760,627). In response, in order to advance prosecution, Applicants have made the above amendments to the claims to clearly specify that the two plug members are bioabsorbable,¹ and respectfully submit that the above claims are allowable, with or without the above amendments, for the reasons that follow.

Applicants rely on MPEP § 2131, entitled “Anticipation – Application of 35 U.S.C. 102(a), (b), and (e),” which states that a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” It is respectfully submitted that Richardson does not describe each and every element of the rejected independent claims, as will now be detailed.

Claim 1: Claim 1, as amended, recites that the tool is for inserting and mating two **bioabsorbable** plug members (2, 3) of a sealing device (1) for closing a wound in the wall of a blood vessel, wherein the tool comprises a gear mechanism (32; 132) coupled to the retracting means for converting a movement of the tool in a proximal direction away from the wound, when the **bioabsorbable** distal plug member is anchored in the blood vessel, to a pushing movement for moving the **bioabsorbable** proximal plug member in a direction towards the **bioabsorbable** distal plug member.

In contrast, Richardson does not teach a tool for inserting and mating **bioabsorbable** plug members for closing a wound, and does not move a **bioabsorbable** proximal plug

¹ Support for this amendment may be found, among other places, at page 6, lines 5-7, since lactide / glycolide polymers or polydioxanones are known bioabsorbable materials.

member in a direction towards a **bioabsorbable** distal plug member. In Richardson, the alleged proximal and distal plug members are metal, which is not bioabsorbable.

Moreover, Richardson does not teach a tool for closing a wound in the wall of a blood vessel. The rivet gun of Richardson is designed to “set heavy duty rivets” and is “especially adapted for the maintenance and repair of snowmobiles.” (Richardson, col. 1, lines 32-34.) The tool would simply rip apart any blood vessel. An attempted use of Richardson on a wall of a blood vessel would render the Rivet Gun of Richardson a torture device.

Still further, even prior to the above amendments, claim 1 is allowable because elements 27 and 28 of Richardson do not meet other requirements of the distal and proximal plugs of claim 1. The deficiencies of Richardson in this regard are explained below, but first Applicants respectfully note that the Office Action is not consistent in its identification of the proximal and distal plugs. On page 2 of the Office Action, in rejecting claim 1, element 28 is identified as a distal plug member and element 27 is identified as a proximal plug member. Then, on page 3, still in rejection of claim 1, element 28 is identified as the proximal plug member. This cannot be. Either element 28 is the distal plug member or element 27 is the distal plug member. The grounds for rejection rely on inconsistent analysis of the features of Richardson. Applicants thus submit that the grounds for rejection are flawed.

Also, even if element 28 is the distal plug member², then Richardson does not teach a means for converting a movement of the tool in a proximal direction away from the wound when the **distal plug member is anchored in the blood vessel**, since element 28 is not anchored to the blood vessel at any time.

Further, regardless of which element is the proximal/distal member, Richardson fails to teach a **pushing movement for moving the proximal plug member in a direction towards the distal plug member**, since element 28 is pulled into element 27, and not pushed into element 27, and element 27 does not move towards element 28.

² Of elements 27 and 28, only 28 meets the requirement that a distal plug be provided with an elongated retracting means, since element 25 is connected to element 28 and not element 27, and the Office Action identifies element 25 as the retracting means.

Finally, the movement of the handles does not satisfy the recitation that movement of the tool in a proximal direction away from the wound is converted to a pushing movement for moving a proximal plug member in a direction towards a distal plug member.

In sum, claim 1, before or after the above amendments, is allowable in view of the cited references. Further, the claims that depend from claim 1 are also allowable at least due to their dependency from claim 1.

Claim 12: Claim 12, as amended, recites that the tool is for closing a wound by positioning a **bioabsorbable** distal plug inside a blood vessel and a **bioabsorbable** proximal plug positioned outside of the blood vessel, wherein the tool comprises a movement direction reverser (32; 132) adapted to be coupled to a retractor which is coupled to the **bioabsorbable** distal plug, wherein the movement direction reverser, is adapted to convert movement of the casing in a proximal direction away from the wound when the **bioabsorbable** distal plug is anchored in the blood vessel to a pushing movement to move the **bioabsorbable** proximal plug in a direction towards the **bioabsorbable** distal plug.

As noted above, the tool of Richardson is not for inserting and mating **bioabsorbable** plug members for closing a wound, and does not move a **bioabsorbable** proximal plug member in a direction towards a **bioabsorbable** distal plug member. Also as noted above, Richardson does not teach a tool for closing a wound in the wall of a blood vessel. In the interests of economy, Applicants refer the reader to the pertinent portions of the discussion above.

Still further, even prior to the above amendments, claim 12 is allowable because elements 27 and 28 of Richardson do not meet the other requirements of the distal and proximal plugs. Element 28, identified in the Office Action (for the rejection of claim 12) as the distal plug member, does not meet the requirement that the distal plug **be anchored in the blood vessel** so that movement of the casing in a proximal direction away from the wound may be converted to a pushing movement to move the proximal plug in a direction towards the distal plug, since element 28 is not anchored to the blood vessel at any time.

Additionally, regardless of which element is the proximal/distal member, the tool of Richardson is not capable of imparting a pushing movement to move the proximal plug in a direction towards the distal plug, since element 28 is pulled into element 27, and not pushed into element 27, and element 27 does not move towards element 28.

Finally, the element of Richardson identified in the Office Action as meeting the recitation of the “casing,” element 12, does not move to flare the rivet, and thus it cannot satisfy the recitation that the movement of the casing in a proximal direction away from the wound is converted to a pushing movement to move the proximal plug in a direction towards the distal plug.

In sum, claim 12, before or after the above amendments, is allowable in view of the cited references. Further, the claims that depend from claim 12 are also allowable at least due to their dependency from claim 12.

New Claims

As seen above, Applicants have added new claims 25 and 26. These claims are allowable for at least the reason that they depend from claim 22, a claim that has been allowed. Entry and allowance is respectfully requested.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.


The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Examiner Roberts is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date July 01, 2006

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4747
Facsimile: (202) 672-5399

By 

Martin J. Cosenza
Attorney for Applicant
Registration No. 48,892